

## DECLARES A. P. WOULD STIFLE COMPETITION

Entomery Makes Accusation in Hearst Injunction Application.

## DECEPTION CHARGE CALLED A PRETEXT

The Associated Press was accused in the Supreme Court yesterday of attempting to extend its authority under its by-laws to the regulation of competition between its members, and also of using its by-laws to stifle competition with itself by other news services. This charge was made by Samuel Entomery, counsel for William R. Hearst, in arguing Mr. Hearst's application for an injunction restraining the directors of the Associated Press from disciplining him because the typographical on the title page of the Oakland edition of the San Francisco Examiner does not meet with the approval of the Associated Press directors.

Mr. Entomery argued that the constitution of the Associated Press that the Oakland edition has a title page which deceives the public is merely a cover for an effort by the Associated Press to use its by-laws to compel Mr. Hearst to grasp one or two hours of a day, to give up his franchise in the association or to discontinue his own news service.

Argument in opposition to the granting of a permanent injunction was made in behalf of the Associated Press by Charles MacVeagh of St. Louis, Jennings, Russell in the absence of Frederick R. Jennings. Mr. MacVeagh said he was impressed with his responsibility in taking the place of Mr. Jennings, who organized the Associated Press in 1909 and had been its counsel ever since. He believed that the question before the court arose from a honest disagreement as to the rights of the parties.

Mr. MacVeagh made two points, the first being that a court of equity will not grant relief when a sufficient remedy can be obtained in a court of law. He said that the testimony of Mr. Hearst, that the plaintiff has no remedy at law, but on the other hand showed that he has such remedies. He insisted that the testimony of S. S. Carroll, general manager of the Hearst newspapers, showed that two of them are prospering without Associated Press franchises, and said that if Mr. Hearst is expelled from the association he may sue for damages.

**Hard to Estimate Damages.** "But I don't see how any one can measure the damages," said Justice Benton. "Mr. Carroll testified that the value of the franchise cannot be estimated in dollars and cents," put in Mr. Entomery.

"Oh, yes," replied Mr. MacVeagh. "They estimated the value of the franchise in the Pulitzer contest for purposes of taxation. If a surrogate can fix the value a jury may also. The fact that the value of the franchise can be measured in dollars and cents is proof that Mr. Hearst should go to a court of law."

Mr. MacVeagh said that the second point was that a court of equity would not lend its aid when in the opinion of the court an effort was being made to deceive the public or the defendant. He commented on a statement of Mr. McVee by Mr. Entomery during the trial as to whether the Associated Press pretended to be a genuine news public service, and said that while the news association does not pretend to be a genuine news public service, it is not the business of a court of equity to inquire into the motives of the Associated Press in providing that the directors are to be sole judges as to whether the by-laws are being violated, and if so, to restrain the board from action.

"But as I understand it," said Justice Benton, "the court is asked to restrain the board from action. The by-laws will be within the scope of the corporate powers of the directors under their charter."

"Then it is a question of whether the action by the *Examiner* was in violation of the by-laws," said Mr. MacVeagh.

**A Question of Jurisdiction.** "The question is, is it an attempt at usurpation of power by the directors?" replied the court.

Arguing in behalf of the plaintiff Mr. Entomery said:

"The question is now how far can the Associated Press go in regulating the general management of papers in this country. It is a broader question than the one here involved. There is no adequate remedy at law for the plaintiff because it is a question of public policy. The Associated Press is unique and can't be replaced. If lost there is no substitute for it. We may estimate the value for the purpose of taxation, but because the tax assessors are municipal officers who would have to tax the loss to the State even if they could estimate the value of the property, we are forced to the conclusion that the Associated Press is a franchise in the Associated Press is a piece of property and it is possible to deprive it of this property and it is impossible to estimate its damage."

Mr. Entomery argued that in the matter of controlling the news at the present time, if Mr. Hearst or any one else attempted to put an organization into the field to collect the news, it would cost more than the amount at which the franchise might be valued for the purpose of taxation. The difference between the two cases is that the plaintiff's loss would be continuous. In order to prove that the plaintiff has a remedy at law, it is not shown that a franchise can be purchased at will, whereas the evidence shows that because of the right of protest of members of the Associated Press it might not be possible to buy such a franchise with a single dollar. Mr. Entomery said:

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## MEDICAL BOARD OUSTED AT RANDALL'S ISLAND

Continued from First Page.

to the increase of infectious cases and the need of proper treatment and segregation of these cases, but without result.

The order further says the communication from the Medical Board "in its self constitutes gross insubordination on the part of the board. It is true that the said atypical board has without notifying the Commissioner given its sanction to the archaic general practice of such instances of physical treatment of feeble minded children referred to in the charges against the superintendent when it is clear that the said board must share the responsibility for the conditions set forth in the charges."

The order restores the general medical board to its former position in charge of the entire medical service on Randall's Island.

## DR. CORNWELL EXPLAINS

Denies Board Is Guilty of "Gross Insubordination."

Dr. Herbert C. de V. Cornwell, secretary of the medical board for atypical children on Randall's Island, upon being associated, they now seek to control and enlarge their by-laws beyond all reason in law. Mr. Stone testified that he regarded the *Examiner's* method of publishing its Oakland edition as usurpation of the business of another member under the by-laws, because of the arrangement by which they are able to get on the streets earlier. This amounts to regulation of competition and whether a member may beat another by a novel form of business enterprise.

"We didn't start this controversy and we don't want to make recommendations, but we were only warring to defend ourselves. They have lashed themselves on to a pedestal of morality and purity, and we're here to test their true motives."

**Stone's Testimony "Disingenuous."** Mr. Entomery characterized Mr. Stone's testimony as "disingenuous." He said that it was an attempt to apply legal evidence to uphold the directors' own contention. He declared that Mr. Stone's testimony was "disingenuous" in three particulars: since he testified, first, that he did not know that the *Examiner* had a title page of the Oakland edition of the San Francisco *Examiner* which deceives the public, and second, that the sort of head on the Oakland edition would not be a violation, although he is the head, tail, front and back of the New York corporation is the sponsor of the Illinois corporation, which was dissolved after the Illinois corporation had declared it a monopoly, although the Illinois corporation dissolved at the business the next morning with no interruption in the service.

Mr. Entomery argued that the Associated Press didn't attempt to discipline Mr. Hearst until it got the idea that it was so powerful that it could regulate the business between members and said:

"When you consider the form of the Associated Press and its power to make by-laws, which is very limited, and the fact that under its charter it can't do business for profit, it is the most method I have seen devised for getting round the anti-trust laws. If any corporation can do what this one is attempting to do, while working under the guise of a non-profit making association, then there is no more use for the business corporations law. They'll all be membership corporations under the benevolent associations statute."

## Says By-Laws Don't Bind Hearst

"The fact that Mr. Hearst subscribed to the by-laws is no more binding on him than the by-laws of the United States Membership corporations cannot create their own by-laws and then attempt to compel others to obey. They are trying to do what the law forbids. The construction of the by-laws must be measured in extent and scope by the power given by the State to make them."

"They hope to compel Mr. Hearst to take one of two horns of the dilemma—to drop his own news service or to be disciplined by the Associated Press. Instead of their high, headlong motives they are urging this case in an attempt to extend the by-laws to enforce a point of law, and to humiliate the public being deceived."

The argument also brought out the fact that Mr. Hearst has had no right to demand that the Associated Press provide that the directors are to be sole judges as to whether the by-laws are being violated, and if so, to restrain the board from action.

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## ROBBERS SHOOT TO OPEN WAY IN CROWD

Ride Away in Auto After Holding Up Paymaster in Street.

## GET \$1,800 IN HANDBAG

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Ogilvie has been employed by the steamboating company for three months as a paymaster. It was his custom on Saturday afternoons to leave the Cedar street office with his little handbag containing about \$2,000. Part of this he paid to the employees of a branch office at Nineteenth street and Avenue A. The balance of the money was the payroll for a larger office at East Fifty-ninth street and the East River. He was on his way there yesterday when he was robbed.

The paymaster left a second avenue elevated train at Fifty-seventh street and said that almost at once he noticed three men coming toward him. He paid no attention to them until he reached Sutton place at Fifty-eighth street, a short distance from the waterfront, when one man shouted, "Hey, there."

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Sea and Land House Gives Employment to About Forty Men.

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As Ogilvie turned he was struck on the head with a blackjack and fell unconscious. Excited boys ran shouting toward the group but were warned away by the three men, one of whom waved a revolver. The boys shouts attracted others and the robbers, finding a large crowd gathering backed toward the Queensboro Bridge, holding the crowd off with their revolvers. As they turned the machine up Avenue A the crowd closed in and one of the robbers standing on the running board fired four shots over the heads of the crowd to open up a path for the machine. The thieves sped up the avenue, while the crowd shouted in vain for a policeman.

Three weeks ago an anonymous friend gave John to the Sea and Land House, an engaged couple of the century-old Presbyterian Church of the same name, to be used for the relief of distress just where and how it was most needed. The rag rug industry of Henry street is the result. The forty men spend five hours a day making these rag rugs of the kind that the grandmothers of this generation used to make from materials given freely by big stores and wholesale houses, the College Settlement and others. The Sea and Land House gives of course the factory space, but there are no other expenses except a few cents worth of dyes, so that the whole capital can be devoted to the wages bill.

Special care is given to the selection of the workers, who are mostly Italians and Russians. There are no hobos among them and they devote their hours to looking for permanent work. It is hard to find, but about 15 per cent have already secured it, according to Mr. Anderson, who superintends the workroom. Meanwhile the rugs they are turning out are really attractive and of the sort that wears long. So if anybody happens to want a rag rug he might do worse than pay a visit to Henry street.

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To the surprise of a crowd of spectators and one of the birds flew away. The rest fluttered about as though intoxicated. One reeled about the street, coming eventually to a lamp post for support.

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used to go to the hospital, however, and was taken to his home at 225 West Twentieth street.

Deputies of the second branch assigned to the case were told by several in the crowd that the machine bore the license number "N. Y. 1688." The police do not believe that that number is correct because of the conflicting stories told.

Ogilvie furnished the police with a meagre description of the men who attacked him. He said they were all about five feet seven inches tall and did not appear to be foreigners. He noticed that one wore a brown hat and overcoat, while the man with the gun was described as being about 25 years old and wearing a black derby hat and black overcoat.

## "SPITE FENCE JIM" EVICTED.

Mayor of Seabright Quits Rumson Road's Villager.

SEABRIGHT, N. J., March 27.—James W. Allgor, called Spite Fence Jim, was turned out of his home yesterday, after holding off a crowd by shooting four shots in the air.

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## MAYO MAY SETTLE WITH GIRL ACCUSER

Compromise Expected After Miss Wahlers Tells Story on Stand.

## BABY TAKEN TO COURT

New Haven, Conn., March 27.—The case of Miss Susanna M. Wahlers, who is suing Virgilus J. Mayo, radiator manufacturer, for the support of her two-year-old daughter, had its first hearing before Justice of the Peace Benjamin Land in the County Court Building here today. When she left the stand the case was adjourned for a week. It is understood tonight that Mayo will make a settlement with the girl before the second hearing.

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